

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220002 **DATE:** December 13, 1985
MATTER OF: Professional Data Services, Inc.

DIGEST:

1. Contracting agency properly selected for award the proposal that received the highest evaluated score for technical factors and price where the evaluation was reasonable and consistent with the solicitation's evaluation scheme.
2. No statute or regulation precludes an award of a fixed-price contract simply because the offeror may have proposed wage rates below the applicable Department of Labor minimum wage determinations. While the risk that the offeror may have to pay higher rates than indicated in its proposal may be a factor in determining the offeror's responsibility, GAO does not review a determination that an offeror is responsible except in limited circumstances.

Professional Data Services, Inc. (PDSI) protests the award of a fixed-price contract to DDD Co. under request for proposals (RFP) No. 67-3K06-85 issued by the Department of Agriculture, for administrative support services for the Procurement and Warehouse Section (PWS) at the National Agriculture Library Building. PDSI essentially argues that the agency's evaluation of proposals did not conform with the RFP's stated evaluation scheme.

We deny the protest.

The work covered by the RFP included controlling and processing procurement documents; responding to inquiries from purchasing offices, vendors, and the finance office; mail handling and distribution; performing some librarian functions concerning procurement resources; and providing receptionist and various other services. The PWS has yearly business of approximately \$14 million and receives 250-300 telephone calls daily.

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The RFP's stated evaluation scheme explained that proposals would be evaluated as follows:

<u>Factors</u>	<u>Numerical Value</u>
Technical Understanding and Approach	40
Past Corporate Experience	10
Key Personnel	10
Price	40

The RFP stated that Price would be evaluated by adding an offeror's price for the basic period and each of three 1-year options and assigning the lowest priced proposal the maximum 40 points. The other proposals would be assigned fewer points in proportion to their higher prices. An amendment, responding to prospective offerors' preproposal questions, advised that Price would be the determining factor only if two or more proposals were technically equal.

The three proposals included in the competitive range were evaluated as follows:

	<u>Technical Points</u>	<u>Price Points</u>	<u>Total Points</u>
DDD	42.50	37.20 (\$218,353)	79.70
PDSI	39.75	13.60 (\$591,011)	53.35
RAI, Inc.	30.50	40.00 (\$203,422)	70.50

The agency conducted discussions and requested best and final offers. The evaluation results are listed below:

	<u>Technical Points</u>	<u>Price Points</u>	<u>Total Points</u>
DDD	42.50	40 (\$287,823)	82.50
PDSI	39.75	15.76 (\$730,640)	55.51
RAI	32.25	36.21 (\$317,928)	68.46

The increased prices mainly resulted from the offerors proposing more personnel in response to the agency's concern, expressed during discussions, that staffing

was inadequate. All best and final offers proposed basically the same number of staff-hours (PDSI proposed 39,164 hours, DDD 39,132 and RAI 38,260). Based on the superior score of DDD's proposal, the agency selected that proposal for award.

The protester contends that the RFP directed offerors to propose highly skilled personnel and that PDSI's proposal was priced higher than the other proposals because PDSI proposed more highly qualified personnel. In PDSI's view, the agency ignored this stated emphasis and made award to a contractor offering a clerical staff at a commensurate price. PDSI requests that we reevaluate its proposal in light of the stated evaluation scheme and rule that PDSI should be awarded the contract based on its proposal's technical excellence.

The Office does not independently review proposals to determine which offer is most advantageous to the government; rather, our review is limited to examining whether the contracting agency's evaluation was fair, reasonable and consistent with the stated evaluation scheme. Aurora Films, B-216706, Jan. 22, 1985, 85-1 CPD ¶ 81. We will question the agency's evaluation only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. Id.

Our review indicates that the agency's evaluation did conform to the evaluation scheme. Contrary to the protester's contention, the RFP did not direct offerors to propose highly skilled personnel as opposed to clerical workers. The RFP's evaluation scheme weighted technical factors 50 percent more important than Price, but there was no emphasis on providing especially qualified employees. In this regard, the evaluation factor of Key Personnel was worth only 10 points, 75 percent less important than Price. Furthermore, the RFP clearly indicated that the required tasks were clerical in nature since it described the positions of the government employees who previously performed the work as Procurement Clerk (Supervisory), Procurement Clerk, Clerk-Typist, and Student Aides.

Moreover, the agency's evaluation of proposed personnel did not rank PDSI superior to DDD. While PDSI scored slightly higher than DDD in Technical Understanding and Approach, DDD outscored PDSI in Past Corporate Experience and Key Personnel.

We believe the record supports the reasonableness of the agency's scoring. Apparently, one reason that PDSI did not receive higher scores for Technical Understanding and Approach was because PDSI submitted an unnecessarily elaborate proposal that in part was confusing regarding what was being offered. An offeror has the burden of submitting an adequately written proposal permitting the agency to make an intelligent evaluation, and failure to do so justifies lowering the proposal's score. ATI Industries, B-215933, Nov. 19, 1984, 84-2 CPD ¶ 540.

Regarding Past Corporate Experience, the agency noted that most of PDSI's experience had been in systems design and development, which probably exposed the firm to valuable experience concerning document control, but was not directly applicable to the RFP's requirements. The protester has not challenged this conclusion. DDD, on the other hand, had more direct experience in administering an office responsible for controlling large numbers of documents.

The agency downgraded PDSI's proposal under Key Personnel because the proposed project manager lacked supervisory experience. DDD's proposed project manager had supervisory experience, and the resume of its proposed personnel showed appropriate experience and qualifications to perform the work. We therefore believe the agency's evaluation provided a proper basis for selecting DDD's proposal for award.

The protester argues that the agency amended the RFP eliminating Price as a factor. The protester construes the amendment that Price would be the determining factor only if two or more proposals were technically equal as having changed the RFP's evaluation scheme by eliminating Price as a factor, except where there were technically equal proposals. The amendment clearly did not eliminate Price as a factor but stated only that Price would become the determining factor among technically equal proposals. Moreover, the award was proper even under the protester's interpretation since DDD outscored PDSI under the technical factors and aside from Price.

The protester also argues that DDD's prices were based on wages that failed to comply with the Department of Labor's minimum wage determination, under the Service Contract Act, incorporated in the RFP. There is no statute or regulation that precludes an award of a fixed-price contract simply because the offeror may have proposed wage rates below the applicable minimum wage determinations. Uniserv Inc., et al., B-218196, et al., June 19, 1985, 85-1 CPD ¶ 699. A contractor is bound to the wage determinations even where its proposal indicates its prices were based on lower rates. The risk that an offeror will be required to pay higher wages conceivably could jeopardize the offeror's ability to perform the proposed contract so as to justify a determination that the offeror is nonresponsible. In this case, however, DDD was determined to be responsible, and our Office does not review an affirmative determination of responsibility absent a showing of either possible fraud on the part of the procuring officials or that definitive responsibility criteria in the RFP have not been met. Id. PDSI does not allege that either circumstance applies here.

Further regarding the minimum wage, PDSI complains that DDD's prices for the option years did not include escalation. We point out that the RFP incorporated by reference a clause, captioned "Fair Labor Standards Act and Service Contract Act Price Adjustment," that provided for a price adjustment where the contractor is compelled to increase employees' wages to comply with a new wage determination. See Serv-Air, Inc; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD ¶ 317. Thus, the failure to include escalation did not indicate that the offeror cannot pay its employees the applicable minimum wage rates.

Finally, the protester speculates that the agency expressed concerns during discussions that PDSI initially did not propose sufficient staffing in order to cause PDSI to raise its prices and to benefit a favored offeror. The record contains no basis in fact to support this allegation. All three proposals in the competitive range initially proposed a staff of five persons. In addition, all offerors were advised that the agency's estimate for the work was 7.3 persons, and that the agency was concerned how the offerors could perform the proposed work with just five persons.

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Therefore find no merit in PDSI's protest, and the
denied.

f *Seamus E. Van Cleve*
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General Counsel

